

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIA POWELL KELLER-MCINTYRE,

No. C-06-3209 MMC (EMC)

Plaintiff,

v.

COLLEGE OF HEALTH & HUMAN
SERVICES, SAN FRANCISCO STATE
UNIVERSITY,**ORDER OVERRULING DEFENDANT'S
OBJECTIONS TO LATE-SERVED LIST
OF FIVE SIMILARLY SITUATED
EMPLOYEES****(Docket No. 135)**Defendant.

Defendant the College of Health & Human Services, San Francisco State University, has objected to Plaintiff Julia Powell Keller-McIntyre's designation of decision makers and employees as untimely. The University further objects that one of the five employees designated by Ms. Keller-McIntyre is not similarly situated. The Court construes the University's objections as a motion for protective order and hereby **DENIES** the motion.

Regarding the first objection, the University has provided evidence that the designation of decision makers and employees was untimely. *See* Shupe Decl., Ex. A. However, in spite of the untimeliness, there are two factors counseling against the University's request for a protective order.

First, the University has not demonstrated any prejudice as a result of the untimely designation. Ms. Keller-McIntyre's designation was only a few days late, and trial is not scheduled until April of next year. Second, and more important, it would have been difficult, if not impossible, for Ms. Keller-McIntyre to comply with the Court's November 29 order. The November 29 order required a designation within three days of the order. In issuing the order, the Court did not take

1 into account the fact that the order was served upon Ms. Keller-McIntyre by mail. It is likely that
2 Ms. Keller-McIntyre did not receive the order until at least a day or two after service. *Cf.* Federal
3 Rule of Civil Procedure 6(e) (where a party must act within a prescribed period after service and
4 service is made by mail, “3 days are added after the prescribed period would otherwise expire.”).
5 Given these circumstances, the Court cannot, as a matter of fairness, hold Ms. Keller-McIntyre to
6 the strict terms of the November 29 order.

7 As for the second objection, the University argues that Jason Katz is not a similarly situated
8 employee because he is Ms. Keller-McIntyre’s supervisor, “not an employee who, like plaintiff, is
9 supervised by him.” Obj. at 1. The fact that Mr. Katz is a supervisor -- even Ms. Keller-McIntyre’s
10 supervisor -- does not automatically mean that it is impossible for him to be similarly situated. As
11 the Court indicated in its November 29 order, whether a person might be similarly situated is a fact
12 specific inquiry and is not precluded simply because one is a supervisor. In the absence of
13 additional argument or evidence, the Court cannot conclude that a protective order is warranted.

14 The University’s objections are overruled.

15 This order disposes of Docket No. 135.

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17 IT IS SO ORDERED.

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19 Dated: December 21, 2006

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21 EDWARD M. CHEN
22 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIA POWELL KELLER-MCINTYRE, No. C-06-3209 MMC (EMC)

Plaintiff,

v.

CERTIFICATE OF SERVICE

COLLEGE OF HEALTH & HUMAN
SERVICES, SAN FRANCISCO STATE
UNIVERSITY,

Defendant.

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

Julia Powell Keller-McIntyre
P.O. Box 320662
San Francisco, CA 94132
415/314-4204 (cell)
415/405-3943 (work)

***ALL OTHER COUNSEL/PARTIES TO
RECEIVE ORDER VIA ELECTRONIC
FILING***

Dated: December 21, 2006

RICHARD W. WIEKING, CLERK

By: /s/
Leni Doyle
Deputy Clerk